

AMENDED IN ASSEMBLY JULY 12, 2011

AMENDED IN ASSEMBLY JUNE 27, 2011

AMENDED IN SENATE MAY 31, 2011

AMENDED IN SENATE APRIL 25, 2011

AMENDED IN SENATE MARCH 24, 2011

SENATE BILL

No. 706

Introduced by Senator Price

February 18, 2011

An act to amend Sections 27, 10004, 10166.02, 10166.12, 10175.2, 10236.2, 10450.6, 10470, 10470.1, 10471, 10471.1, 10471.3, 10471.5, 10472, 10472.1, 10473, 10473.1, 10474, 10474.5, 10475, 10476, 10477, 10479, and 10481 of, to amend, repeal, and add Section 11360 of, *and* to add Sections 10050.1, 10100.4, 10106, 10186, 10186.1, 10186.2, 10186.8, 10186.9, 11310.1, 11313.2, 11315.7, 11315.9, 11319.1, 11319.2, and 11319.3 to, ~~and to add and repeal Section 10186.8 of,~~ the Business and Professions Code, relating to business and professions.

LEGISLATIVE COUNSEL'S DIGEST

SB 706, as amended, Price. Business and professions.

(1) Existing law provides for the licensure, endorsement, and regulation of real estate brokers, real estate salespersons, and mortgage loan originators by the Real Estate Commissioner of the Department of Real Estate in the Business, Transportation and Housing Agency. The Office of Real Estate Appraisers within the Business, Transportation and Housing Agency is under the supervision and control of the Secretary of Business, Transportation and Housing. Existing law provides for the licensure, certification, and regulation of persons who

engage in specified real estate appraisal activity by the Director of the Office of Real Estate Appraisers, who is responsible to the Secretary of Business, Transportation and Housing.

This bill would state that protection of the public shall be the highest priority for the department and the office in exercising their licensing, regulatory, and disciplinary functions.

The bill would authorize the department and the office to enter into a settlement with a licensee or applicant instead of the issuance of an accusation or statement of issues against the licensee or applicant and would require the settlement to identify the factual basis for the action being taken and the statutes or regulations that have been violated. The bill would authorize an administrative law judge to order a licensee in a disciplinary proceeding to pay, upon request of the commissioner or the director, the reasonable costs of investigating and prosecuting the disciplinary case against the licensee.

When the commissioner or the director disciplines a licensee or registrant by placing him or her on probation, the bill would authorize the commissioner and the director to require the licensee or registrant to pay the costs associated with the probation monitoring.

The bill would provide that a license or certificate shall be suspended if the licensee or registrant is incarcerated after the conviction of a felony and would require the department or the office to notify the licensee or registrant of the suspension and of his or her right to a specified hearing. The bill would specify that no hearing is required, however, if the conviction was for a violation of federal law or state law for the use of dangerous drugs or controlled substances or specified sex offenses.

The bill would require a licensee and registrant to report to the department or the office when there is an indictment or information charging a felony against the licensee or registrant or when he or she has been convicted of a felony or misdemeanor. The bill would make a violation of this reporting requirement a cause for discipline.

The bill would require costs recovered pursuant to these disciplinary proceedings to be deposited in either the Real Estate Fund or the Real Estate Appraisers Regulation Fund, as specified, and would make the funds available upon appropriation by the Legislature.

The bill would require the ~~Secretary of Business, Transportation and Housing, by January 31, 2012, to appoint a Department of Real Estate Enforcement Program Monitor whose duties would include monitoring and evaluating the department's disciplinary system and reporting his~~

~~or her findings, as specified, to the department and the Legislature no later than August 1, 2012. This bill would make the provisions that pertain to the enforcement program monitor inoperative on January 31, 2014 State Auditor to conduct an audit of the Department of Real Estate, as specified, to be funded by moneys from the Real Estate Fund, subject to appropriation by the Legislature.~~

The bill would require the secretary to review and evaluate the office, and make recommendations to the Legislature by October 1, 2014, regarding whether the office should be, among other things, consolidated within the department or another state entity.

The bill would provide that, on and after January 1, 2015, the department and the office shall be subject to ~~specified~~ review by the appropriate policy committees of the Legislature.

(2) Existing law authorizes the director to adopt regulations relating to the license renewal process that include, among other things, continuing education requirements. Existing law authorizes renewal applicants to certify that they have read and understand specified state and federal laws instead of being required to take a course relating to federal and state appraisal laws.

This bill would, commencing January 1, 2013, require these renewal applicants to take that course.

(3) Existing law establishes in the Real Estate Fund the Recovery Account, which is continuously appropriated for purposes of funding the Real Estate Recovery Program. The account is funded by crediting a specified percentage of any real estate license fee collected unless the balance in the Recovery Account is at least \$3,500,000. Existing law provides that when an aggrieved person obtains a final judgment in a court of competent jurisdiction or an arbitration award against a defendant based upon specified misconduct by the defendant, the aggrieved person may file a claim application with the Department of Real Estate for payment from the Recovery Account of the amount unpaid on the judgment which represents an actual and direct loss to the claimant in the transaction. Existing law requires the commissioner to render a final written decision on the application within 90 days, except as specified, after a completed application has been received. Under existing law, if the commissioner fails to render a written decision in response to the claim within a specified timeframe, the claim shall be deemed to have been denied by the commissioner on the final day for rendering the decision.

This bill would rename the Recovery Account as the Consumer Recovery Account and would delete the provision specifying that the claim shall be deemed to have been denied in the circumstances described above.

(4) Existing law provides for the regulation of various profession and vocation licensees by boards within the Department of Consumer Affairs. The department is under the control of the Director of Consumer Affairs. Existing law, the Chiropractic Act, enacted by initiative, provides for the licensure and regulation of chiropractors by the State Board of Chiropractic Examiners. Existing law requires certain boards within the department to disclose on the Internet information on their respective licensees.

This bill would require the California Board of Accountancy, the California Architects Board, the State Athletic Commission, the State Board of Barbering and Cosmetology, the State Board of Guide Dogs for the Blind, the State Board of Chiropractic Examiners, the Department of Real Estate, and the Office of Real Estate Appraisers to disclose on the Internet information on their respective licensees, as specified.

(5) The bill would make other conforming and technical changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 27 of the Business and Professions Code
2 is amended to read:
3 27. (a) Each entity specified in subdivisions (c), (d), (e), (f),
4 and (g) shall provide on the Internet information regarding the
5 status of every license issued by that entity in accordance with the
6 California Public Records Act (Chapter 3.5 (commencing with
7 Section 6250) of Division 7 of Title 1 of the Government Code)
8 and the Information Practices Act of 1977 (Chapter 1 (commencing
9 with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil
10 Code). The public information to be provided on the Internet shall
11 include information on suspensions and revocations of licenses
12 issued by the entity and other related enforcement action, including
13 accusations filed pursuant to the Administrative Procedure Act
14 (Chapter 3.5 (commencing with Section 11340) of Part 1 of
15 Division 3 of Title 2 of the Government Code) taken by the entity
16 relative to persons, businesses, or facilities subject to licensure or

1 regulation by the entity. The information may not include personal
2 information, including home telephone number, date of birth, or
3 social security number. Each entity shall disclose a licensee's
4 address of record. However, each entity shall allow a licensee to
5 provide a post office box number or other alternate address, instead
6 of his or her home address, as the address of record. This section
7 shall not preclude an entity from also requiring a licensee, who
8 has provided a post office box number or other alternative mailing
9 address as his or her address of record, to provide a physical
10 business address or residence address only for the entity's internal
11 administrative use and not for disclosure as the licensee's address
12 of record or disclosure on the Internet.

13 (b) In providing information on the Internet, each entity specified
14 in subdivisions (c) and (d) shall comply with the Department of
15 Consumer Affairs Guidelines for Access to Public Records.

16 (c) Each of the following entities within the Department of
17 Consumer Affairs shall comply with the requirements of this
18 section:

19 (1) The Board for Professional Engineers, Land Surveyors, and
20 Geologists shall disclose information on its registrants and
21 licensees.

22 (2) The Bureau of Automotive Repair shall disclose information
23 on its licensees, including auto repair dealers, smog stations, lamp
24 and brake stations, smog check technicians, and smog inspection
25 certification stations.

26 (3) The Bureau of Electronic and Appliance Repair, Home
27 Furnishings, and Thermal Insulation shall disclose information on
28 its licensees and registrants, including major appliance repair
29 dealers, combination dealers (electronic and appliance), electronic
30 repair dealers, service contract sellers, and service contract
31 administrators.

32 (4) The Cemetery and Funeral Bureau shall disclose information
33 on its licensees, including cemetery brokers, cemetery salespersons,
34 cemetery managers, crematory managers, cemetery authorities,
35 crematories, cremated remains disposers, embalmers, funeral
36 establishments, and funeral directors.

37 (5) The Professional Fiduciaries Bureau shall disclose
38 information on its licensees.

39 (6) The Contractors' State License Board shall disclose
40 information on its licensees and registrants in accordance with

Chapter 9 (commencing with Section 7000) of Division 3. In addition to information related to licenses as specified in subdivision (a), the board shall also disclose information provided to the board by the Labor Commissioner pursuant to Section 98.9 of the Labor Code.

(7) The Bureau for Private Postsecondary Education shall disclose information on private postsecondary institutions under its jurisdiction, including disclosure of notices to comply issued pursuant to Section 94935 of the Education Code.

(8) The California Board of Accountancy shall disclose information on its licensees and registrants.

(9) The California Architects Board shall disclose information on its licensees, including architects and landscape architects.

(10) The State Athletic Commission shall disclose information on its licensees and registrants.

(11) The State Board of Barbering and Cosmetology shall disclose information on its licensees.

(12) The State Board of Guide Dogs for the Blind shall disclose information on its licensees and registrants.

(13) The Acupuncture Board shall disclose information on its licensees.

(14) The Board of Behavioral Sciences shall disclose information on its licensees, including marriage and family therapists, licensed clinical social workers, licensed educational psychologists, and licensed professional clinical counselors.

(15) The Dental Board of California shall disclose information on its licensees.

(16) The State Board of Optometry shall disclose information regarding certificates of registration to practice optometry, statements of licensure, optometric corporation registrations, branch office licenses, and fictitious name permits of its licensees.

(17) The Board of Psychology shall disclose information on its licensees, including psychologists, psychological assistants, and registered psychologists.

(d) The State Board of Chiropractic Examiners shall disclose information on its licensees.

(e) The Department of Real Estate shall disclose information on its licensees.

(f) The Office of Real Estate Appraisers shall disclose information on its licensees and registrants.

1 (g) The Structural Pest Control Board shall disclose information
2 on its licensees, including applicators, field representatives, and
3 operators in the areas of fumigation, general pest and wood
4 destroying pests and organisms, and wood roof cleaning and
5 treatment.

6 (h) “Internet” for the purposes of this section has the meaning
7 set forth in paragraph (6) of subdivision (e) of Section 17538.

8 SEC. 2. Section 10004 of the Business and Professions Code
9 is amended to read:

10 10004. “Department” means the Department of Real Estate in
11 the Business, Transportation and Housing Agency.

12 SEC. 3. Section 10050.1 is added to the Business and
13 Professions Code, to read:

14 10050.1. Protection of the public shall be the highest priority
15 for the Department of Real Estate in exercising its licensing,
16 regulatory, and disciplinary functions. Whenever the protection
17 of the public is inconsistent with other interests sought to be
18 promoted, the protection of the public shall be paramount.

19 SEC. 4. Section 10100.4 is added to the Business and
20 Professions Code, to read:

21 10100.4. (a) Notwithstanding Section 11415.60 of the
22 Government Code, the department may enter into a settlement
23 with a licensee or applicant instead of the issuance of an accusation
24 or statement of issues against that licensee or applicant.

25 (b) The settlement shall identify the factual basis for the action
26 being taken and the statutes or regulations violated.

27 (c) A person who enters a settlement pursuant to this section is
28 not precluded from filing a petition, in the timeframe permitted
29 by law, to modify the terms of the settlement or a petition for early
30 termination of probation, if probation is part of the settlement.

31 (d) Any settlement with a licensee executed pursuant to this
32 section shall be considered discipline by the department.

33 SEC. 5. Section 10106 is added to the Business and Professions
34 Code, to read:

35 10106. (a) Except as otherwise provided by law, in any order
36 issued in resolution of a disciplinary proceeding before the
37 department, the commissioner may request the administrative law
38 judge to direct a licensee found to have committed a violation of
39 this part to pay a sum not to exceed the reasonable costs of the
40 investigation and enforcement of the case.

1 (b) In the case of a disciplined licensee that is a corporation or
2 a partnership, the order may be made against the licensed corporate
3 entity or licensed partnership.

4 (c) A certified copy of the actual costs, or a good faith estimate
5 of costs where actual costs are not available, signed by the
6 commissioner or the commissioner's designated representative,
7 shall be prima facie evidence of reasonable costs of investigation
8 and prosecution of the case. The costs shall include the amount of
9 investigative and enforcement costs up to the date of the hearing,
10 including, but not limited to, charges imposed by the Attorney
11 General.

12 (d) The administrative law judge shall make a proposed finding
13 of the amount of reasonable costs of investigation and prosecution
14 of the case when requested pursuant to subdivision (a). The finding
15 of the administrative law judge with regard to costs shall not be
16 reviewable by the commissioner to increase the cost award. The
17 commissioner may reduce or eliminate the cost award, or remand
18 to the administrative law judge where the proposed decision fails
19 to make a finding on costs requested pursuant to subdivision (a).

20 (e) Where an order for recovery of costs is made and timely
21 payment is not made as directed in the commissioner's decision,
22 the commissioner may enforce the order for repayment in any
23 appropriate court. This right of enforcement shall be in addition
24 to any other rights the commissioner may have as to any licensee
25 to pay costs.

26 (f) In any action for recovery of costs, proof of the
27 commissioner's decision shall be conclusive proof of the validity
28 of the order of payment and the terms for payment.

29 (g) (1) Except as provided in paragraph (2), the department
30 shall not renew or reinstate the license of any licensee who has
31 failed to pay all of the costs ordered under this section.

32 (2) The department may, in its discretion, conditionally renew
33 or reinstate for a maximum of one year the license of any licensee
34 who demonstrates financial hardship and who enters into a formal
35 agreement with the department to reimburse the department within
36 that one-year period for the unpaid costs.

37 (h) All costs recovered under this section shall be considered a
38 reimbursement for costs incurred and shall be deposited in the
39 Real Estate Fund to be available, notwithstanding Section 10451,
40 upon appropriation by the Legislature.

1 (i) Nothing in this section shall preclude the department from
2 including the recovery of the costs of investigation and enforcement
3 of a case in any stipulated settlement.

4 SEC. 6. Section 10166.02 of the Business and Professions
5 Code is amended to read:

6 10166.02. (a) A real estate broker who acts pursuant to Section
7 10131.1 or subdivision (d) or (e) of Section 10131, and who makes,
8 arranges, or services loans secured by real property containing one
9 to four residential units, and any salesperson who acts in a similar
10 capacity under the supervision of that broker, shall notify the
11 department by January 31, 2010, or within 30 days of commencing
12 that activity, whichever is later. The notification shall be made in
13 writing, as directed, on a form that is acceptable to the
14 commissioner.

15 (b) No individual may engage in business as a mortgage loan
16 originator under this article without first doing both of the
17 following:

18 (1) Obtaining and maintaining a real estate license pursuant to
19 Article 2 (commencing with Section 10150).

20 (2) Obtaining and maintaining a real estate license endorsement
21 pursuant to this article identifying that individual as a licensed
22 mortgage loan originator.

23 (c) License endorsements shall be valid for a period of one year
24 and shall expire on the 31st of December each year.

25 (d) Applicants for a mortgage loan originator license
26 endorsement shall apply in a form prescribed by the commissioner.
27 Each form shall contain content as set forth by rule, regulation,
28 instruction, or procedure of the commissioner.

29 (e) In order to fulfill the purposes of this article, the
30 commissioner may establish relationships or contracts with the
31 Nationwide Mortgage Licensing System and Registry or other
32 entities designated by the Nationwide Mortgage Licensing System
33 and Registry to collect and maintain records and process transaction
34 fees or other fees related to licensees or other persons subject to
35 this article.

36 (f) A real estate broker or salesperson who fails to notify the
37 department pursuant to subdivision (a), or who fails to obtain a
38 license endorsement required pursuant to paragraph (2) of
39 subdivision (b), shall be assessed a penalty of fifty dollars (\$50)
40 per day for each day written notification has not been received or

1 a license endorsement has not been obtained, up to and including
2 the 30th day after the first day of the assessment penalty. On and
3 after the 31st day, the penalty is one hundred dollars (\$100) per
4 day, not to exceed a total penalty of ten thousand dollars (\$10,000),
5 regardless of the number of days, until the department receives
6 the written notification or the licensee obtains the license
7 endorsement. Penalties for violations of subdivisions (a) and (b)
8 shall be additive.

9 (g) The commissioner may suspend or revoke the license of a
10 real estate broker or salesperson who fails to pay a penalty imposed
11 pursuant to this section. In addition, the commissioner may bring
12 an action in an appropriate court of this state to collect payment
13 of that penalty.

14 (h) All penalties paid or collected under this section shall be
15 deposited into the Consumer Recovery Account of the Real Estate
16 Fund and shall, upon appropriation by the Legislature, be available
17 for expenditure for the purposes specified in Chapter 6.5
18 (commencing with Section 10470).

19 SEC. 7. Section 10166.12 of the Business and Professions
20 Code is amended to read:

21 10166.12. (a) As often as the commissioner deems necessary
22 and appropriate, the commissioner shall examine the affairs of
23 each real estate broker who is required to notify the commissioner
24 or obtain a license endorsement pursuant to Section 10166.02 for
25 compliance with this part. These examinations shall also include
26 a review of the affairs of all real estate brokers and real estate
27 salespersons acting under the supervision of each real estate broker
28 who is required to file reports with the department pursuant to
29 Section 10166.07. The commissioner shall appoint suitable persons
30 to perform these examinations. The commissioner and his or her
31 appointees may examine the books, records, and documents of the
32 licensee, and may examine the licensee's officers, directors,
33 employees, or agents under oath regarding the licensee's
34 operations. The commissioner may cooperate with any agency of
35 the state or federal government, other states, agencies, the Federal
36 National Mortgage Association, or the Federal Home Loan
37 Mortgage Corporation. The commissioner may accept an
38 examination conducted by one of these entities in place of an
39 examination by the commissioner under this section, unless the
40 commissioner determines that the examination does not provide

1 information necessary to enable the commissioner to fulfill his or
2 her responsibilities under this division.

3 (b) The commissioner may impose a penalty against a real estate
4 broker or real estate salesperson whose affairs are examined or
5 reviewed pursuant to subdivision (a) based on the findings of the
6 examination or review. The commissioner may suspend or revoke
7 the license or license endorsement of a real estate broker or real
8 estate salesperson who fails to pay that penalty. In addition, the
9 commissioner may bring an action in an appropriate court of this
10 state to collect payment of the penalty.

11 (c) Penalties collected pursuant to subdivision (b) shall be
12 deposited into the Consumer Recovery Account of the Real Estate
13 Fund and shall, upon appropriation by the Legislature, be available
14 for expenditure for the purposes specified in Chapter 6.5
15 (commencing with Section 10470).

16 (d) The statement of the findings of an examination conducted
17 pursuant to this section shall belong to the commissioner and shall
18 not be disclosed to anyone other than the licensee, law enforcement
19 officials, or other state or federal regulatory agencies for further
20 investigation and enforcement. Reports required of licensees by
21 the commissioner under this division and results of examinations
22 performed by the commissioner under this division are the property
23 of the commissioner.

24 SEC. 8. Section 10175.2 of the Business and Professions Code
25 is amended to read:

26 10175.2. (a) If the Real Estate Commissioner determines that
27 the public interest and public welfare will be adequately served
28 by permitting a real estate licensee to pay a monetary penalty to
29 the department in lieu of an actual license suspension, the
30 commissioner may, on the petition of the licensee, stay the
31 execution of all or some part of the suspension on the condition
32 that the licensee pay a monetary penalty and the further condition
33 that the licensee incur no other cause for disciplinary action within
34 a period of time specified by the commissioner.

35 (b) The commissioner may exercise the discretion granted under
36 subdivision (a) either with respect to a suspension ordered by a
37 decision after a contested hearing on an accusation against the
38 licensee or by stipulation with the licensee after the filing of an
39 accusation, but prior to the rendering of a decision based upon the
40 accusation. In either case, the terms and conditions of the

1 disciplinary action against the licensee shall be made part of a
2 formal decision of the commissioner.

3 (c) If a licensee fails to pay the monetary penalty in accordance
4 with the terms and conditions of the decision of the commissioner,
5 the commissioner may, without a hearing, order the immediate
6 execution of all or any part of the stayed suspension in which event
7 the licensee shall not be entitled to any repayment nor credit,
8 prorated or otherwise, for money paid to the department under the
9 terms of the decision.

10 (d) The amount of the monetary penalty payable under this
11 section shall not exceed two hundred fifty dollars (\$250) for each
12 day of suspension stayed nor a total of ten thousand dollars
13 (\$10,000) per decision regardless of the number of days of
14 suspension stayed under the decision.

15 (e) Any monetary penalty received by the department pursuant
16 to this section shall be credited to the Consumer Recovery Account
17 of the Real Estate Fund.

18 SEC. 9. Section 10186 is added to the Business and Professions
19 Code, to read:

20 10186. (a) When the commissioner disciplines a licensee by
21 placing him or her on probation, the commissioner may, in addition
22 to any other terms and conditions placed upon the licensee, require
23 the licensee to pay the monetary costs associated with monitoring
24 the licensee's probation.

25 (b) The commissioner shall not renew a license or an
26 endorsement if the licensee fails to pay all of the costs he or she
27 is ordered to pay pursuant to this section once the licensee has
28 served his or her term of probation.

29 (c) The commissioner shall not reinstate a license or license
30 endorsement if the petitioner has failed to pay any costs he or she
31 was ordered to pay pursuant to this section.

32 (d) All costs recovered under this section shall be considered a
33 reimbursement for costs incurred and shall be deposited in the
34 Real Estate Fund to be available, notwithstanding Section 10451,
35 upon appropriation by the Legislature.

36 SEC. 10. Section 10186.1 is added to the Business and
37 Professions Code, to read:

38 10186.1. (a) A license or an endorsement of the department
39 shall be suspended automatically during any time that the licensee
40 is incarcerated after conviction of a felony, regardless of whether

1 the conviction has been appealed. The department shall,
2 immediately upon receipt of the certified copy of the record of
3 conviction, determine whether the license or endorsement has been
4 automatically suspended by virtue of the licensee's incarceration,
5 and if so, the duration of that suspension. The department shall
6 notify the licensee of the suspension and of his or her right to elect
7 to have the issue of penalty heard as provided in subdivision (d).

8 (b) If after a hearing before an administrative law judge from
9 the Office of Administrative Hearings it is determined that the
10 felony for which the licensee was convicted was substantially
11 related to the qualifications, functions, or duties of a licensee, the
12 commissioner upon receipt of the certified copy of the record of
13 conviction, shall suspend the license or endorsement until the time
14 for appeal has elapsed, if no appeal has been taken, or until the
15 judgment of conviction has been affirmed on appeal or has
16 otherwise become final, and until further order of the department.

17 (c) Notwithstanding subdivision (b), a conviction of a charge
18 of violating any federal statute or regulation or any statute or
19 regulation of this state regulating dangerous drugs or controlled
20 substances, or a conviction of Section 187, 261, 262, or 288 of the
21 Penal Code, shall be conclusively presumed to be substantially
22 related to the qualifications, functions, or duties of a licensee and
23 no hearing shall be held on this issue. However, upon its own
24 motion or for good cause shown, the commissioner may decline
25 to impose or may set aside the suspension when it appears to be
26 in the interest of justice to do so, with due regard to maintaining
27 the integrity of, and confidence in, the practice regulated by the
28 department.

29 (d) (1) Discipline may be ordered against a licensee in
30 accordance with the laws and regulations of the department when
31 the time for appeal has elapsed, the judgment of conviction has
32 been affirmed on appeal, or an order granting probation is made
33 suspending the imposition of sentence, irrespective of a subsequent
34 order under Section 1203.4 of the Penal Code allowing the person
35 to withdraw his or her plea of guilty and to enter a plea of not
36 guilty, setting aside the verdict of guilty, or dismissing the
37 accusation, complaint, information, or indictment.

38 (2) The issue of penalty shall be heard by an administrative law
39 judge from the Office of Administrative Hearings. The hearing
40 shall not be held until the judgment of conviction has become final

1 or, irrespective of a subsequent order under Section 1203.4 of the
2 Penal Code, an order granting probation has been made suspending
3 the imposition of sentence, except that a licensee may, at his or
4 her option, elect to have the issue of penalty decided before those
5 time periods have elapsed. Where the licensee so elects, the issue
6 of penalty shall be heard in the manner described in subdivision
7 (b) at the hearing to determine whether the conviction was
8 substantially related to the qualifications, functions, or duties of a
9 licensee. If the conviction of a licensee who has made this election
10 is overturned on appeal, any discipline ordered pursuant to this
11 section shall automatically cease. Nothing in this subdivision shall
12 prohibit the department from pursuing disciplinary action based
13 on any cause other than the overturned conviction.

14 (e) The record of the proceedings resulting in a conviction,
15 including a transcript of the testimony in those proceedings, may
16 be received in evidence.

17 (f) Any other provision of law setting forth a procedure for the
18 suspension or revocation of a license or endorsement issued by
19 the department shall not apply to proceedings conducted pursuant
20 to this section.

21 SEC. 11. Section 10186.2 is added to the Business and
22 Professions Code, to read:

23 10186.2. (a) (1) A licensee shall report any of the following
24 to the department:

25 (A) The bringing of an indictment or information charging a
26 felony against the licensee.

27 (B) The arrest of the licensee.

28 (C) The conviction of the licensee, including any verdict of
29 guilty, or plea of guilty or no contest, of any felony or
30 misdemeanor.

31 (D) Any disciplinary action taken by another licensing entity
32 or authority of this state or of another state or an agency of the
33 federal government.

34 (2) The report required by this subdivision shall be made in
35 writing within 30 days of the date of the bringing of the indictment
36 or the charging of a felony, the arrest, the conviction, or the
37 disciplinary action.

38 (b) Failure to make a report required by this section shall
39 constitute a cause for discipline.

1 ~~SEC. 12.— Section 10186.8 is added to the Business and~~
2 ~~Professions Code, to read:~~

3 ~~10186.8. (a) (1) The Secretary of the Business, Transportation~~
4 ~~and Housing Agency shall appoint a Department of Real Estate~~
5 ~~Enforcement Program Monitor no later than January 31, 2012.~~
6 ~~The secretary may retain a person for this position by a personal~~
7 ~~services contract, the Legislature finding, pursuant to Section~~
8 ~~19130 of the Government Code, that this is a new state function:~~

9 ~~(2) The secretary shall supervise the enforcement program~~
10 ~~monitor and may terminate or dismiss him or her from this position.~~

11 ~~(b) The secretary shall advertise the availability of this position.~~
12 ~~The requirements for this position include experience in conducting~~
13 ~~investigations and familiarity with state laws, rules, and procedures~~
14 ~~pertaining to the department and familiarity with relevant~~
15 ~~administrative procedures.~~

16 ~~(c) (1) The enforcement program monitor shall monitor and~~
17 ~~evaluate the department's discipline system and procedures, making~~
18 ~~as his or her highest priority the reform and reengineering of the~~
19 ~~department's enforcement program and operations, the~~
20 ~~improvement of the overall efficiency of the department's~~
21 ~~disciplinary system, and the improvement of the department's~~
22 ~~efforts to receive public input from its licensees and from members~~
23 ~~of the public.~~

24 ~~(2) This monitoring duty shall be on a continuing basis for a~~
25 ~~period of no more than two years from the date of the enforcement~~
26 ~~program monitor's appointment and shall include, but not be~~
27 ~~limited to, improving the quality and consistency of complaint~~
28 ~~processing and investigation and reducing the timeframes for each,~~
29 ~~reducing any complaint backlog, assuring consistency in the~~
30 ~~application of sanctions or discipline imposed on licensees. The~~
31 ~~monitoring duties shall include the following areas:~~

32 ~~(A) The accurate and consistent implementation of the laws and~~
33 ~~rules affecting discipline.~~

34 ~~(B) Staff concerns regarding disciplinary matters or procedures.~~

35 ~~(C) Appropriate utilization of licensed professionals to~~
36 ~~investigate complaints.~~

37 ~~(D) The department's cooperation with other governmental~~
38 ~~entities charged with enforcing related laws and regulations~~
39 ~~regarding real estate licensees.~~

1 ~~(E) Whether the department's efforts to receive public input~~
2 ~~would be improved by the establishment of a real estate advisory~~
3 ~~commission required by statute.~~

4 ~~(3) The enforcement program monitor shall exercise no authority~~
5 ~~over the department's discipline operations or staff; however, the~~
6 ~~department and its staff shall cooperate with him or her, and the~~
7 ~~department shall provide data, information, and case files as~~
8 ~~requested by the enforcement program monitor to perform all of~~
9 ~~his or her duties.~~

10 ~~(4) The secretary shall assist the enforcement program monitor~~
11 ~~in the performance of his or her duties, and the enforcement~~
12 ~~program monitor shall have the same investigative authority as~~
13 ~~the secretary.~~

14 ~~(d) The enforcement program monitor shall submit an initial~~
15 ~~written report of his or her findings and conclusions to the~~
16 ~~department and the Legislature no later than August 1, 2012, and~~
17 ~~every six months thereafter, and be available to make oral reports~~
18 ~~to each, if requested to do so. The enforcement program monitor~~
19 ~~may also provide additional information to either the secretary or~~
20 ~~the Legislature at his or her discretion or at the request of either~~
21 ~~the secretary or the Legislature. The enforcement program monitor~~
22 ~~shall make his or her reports available to the public or the media.~~
23 ~~The enforcement program monitor shall make every effort to~~
24 ~~provide the department with an opportunity to reply to any facts,~~
25 ~~findings, issues, or conclusions in his or her reports with which~~
26 ~~the department may disagree.~~

27 ~~(e) The department shall reimburse the secretary for all of the~~
28 ~~costs associated with the employment of an enforcement program~~
29 ~~monitor.~~

30 ~~(f) This section shall remain in effect only until January 31,~~
31 ~~2014, and as of that date is repealed, unless a later enacted statute,~~
32 ~~that is enacted before January 31, 2014, deletes or extends that~~
33 ~~date.~~

34 *SEC. 12. Section 10186.8 is added to the Business and*
35 *Professions Code, to read:*

36 *10186.8. The State Auditor shall conduct an audit of the*
37 *department to determine if the department is effectively and*
38 *efficiently carrying out its responsibilities with regard to the laws*
39 *and regulations related to the department's enforcement and*
40 *discipline program for its licensees. The audit shall include, but*

1 *not be limited to, the quality, consistency, and timeliness of*
2 *complaint processing, investigations, and the application of*
3 *sanctions or discipline imposed on licensees. The State Auditor*
4 *shall report his or her audit findings to the department and the*
5 *appropriate policy committees of the Legislature no later than*
6 *August 1, 2012. The commissioner shall reimburse the State*
7 *Auditor for costs incurred in completing the audit using moneys*
8 *from the Real Estate Fund, subject to appropriation by the*
9 *Legislature.*

10 SEC. 13. Section 10186.9 is added to the Business and
11 Professions Code, to read:

12 10186.9. Notwithstanding any other provision of law, on and
13 after January 1, 2015, the department shall be subject to review
14 by the appropriate policy committees of the Legislature. ~~The review~~
15 ~~shall include, but shall not be limited to, an evaluation of the reports~~
16 ~~submitted by the enforcement program monitor pursuant to~~
17 ~~subdivision (d) of Section 10186.8.~~

18 SEC. 14. Section 10236.2 of the Business and Professions
19 Code is amended to read:

20 10236.2. (a) A real estate broker who satisfies the criteria of
21 subdivision (a) or (b) of Section 10232 and who fails to notify the
22 Department of Real Estate, in writing, of that fact within 30 days
23 thereafter as required by subdivision (e) of Section 10232 shall be
24 assessed a penalty of fifty dollars (\$50) per day for each additional
25 day written notification has not been received up to and including
26 the 30th day after the first day of the assessment penalty. On and
27 after the 31st day the penalty is one hundred dollars (\$100) per
28 day, not to exceed a total penalty of ten thousand dollars (\$10,000),
29 regardless of the number of days, until the department receives
30 the written notification.

31 (b) The commissioner may suspend or revoke the license of any
32 real estate broker who fails to pay a penalty imposed under this
33 section. In addition, the commissioner may bring an action in an
34 appropriate court of this state to collect payment of the penalty.

35 (c) All penalties paid or collected under this section shall be
36 deposited into the Consumer Recovery Account of the Real Estate
37 Fund.

38 SEC. 15. Section 10450.6 of the Business and Professions
39 Code is amended to read:

1 10450.6. There shall be separate accounts in the Real Estate
2 Fund for purposes of real estate education and research and for
3 purposes of recovery which shall be known respectively as the
4 Education and Research Account and the Consumer Recovery
5 Account. The commissioner may, by regulation, require that up
6 to 8 percent, or any lesser amount that he or she deems appropriate,
7 of the amount of any license fee collected under this part be
8 credited to the Education and Research Account. Twelve percent
9 of the amount of any license fee collected shall be credited to the
10 Consumer Recovery Account, provided, however, that if as of
11 June 30 of any fiscal year the balance of funds in the Consumer
12 Recovery Account is at least three million five hundred thousand
13 dollars (\$3,500,000), all funds in excess of this amount which have
14 been credited to the Consumer Recovery Account shall instead be
15 credited to the Real Estate Fund. As long as the balance of funds
16 in the Consumer Recovery Account exceeds three million five
17 hundred thousand dollars (\$3,500,000), all license fees collected,
18 except for the percentage of license fees credited to the Education
19 and Research Account, shall be credited to the Real Estate Fund.
20 Funds in the Education and Research Account shall be used by
21 the commissioner in accordance with Section 10451.5. The
22 Consumer Recovery Account is continuously appropriated for
23 carrying out Chapter 6.5 (commencing with Section 10470).

24 As used in this part or any other provision of law, "Recovery
25 Account" shall be deemed to refer to the Consumer Recovery
26 Account.

27 SEC. 16. Section 10470 of the Business and Professions Code
28 is amended to read:

29 10470. If, on June 30 of any year, the balance remaining in the
30 Consumer Recovery Account in the Real Estate Fund is less than
31 two hundred thousand dollars (\$200,000), every licensed broker,
32 when obtaining or renewing any broker license within four years
33 thereafter, shall pay, in addition to the license fee, a fee of seven
34 dollars (\$7), and every licensed salesperson, when obtaining or
35 renewing such license within four years thereafter, shall pay, in
36 addition to the license fee, a fee of four dollars (\$4). The fees from
37 both broker and salesperson licensees shall be paid into the State
38 Treasury and credited to the Consumer Recovery Account.

39 SEC. 17. Section 10470.1 of the Business and Professions
40 Code is amended to read:

1 10470.1. (a) In addition to the amount paid into the Consumer
2 Recovery Account as set forth in Section 10450.6, the Real Estate
3 Commissioner may authorize the transfer from the Real Estate
4 Fund to the Consumer Recovery Account of any amounts as are
5 deemed necessary.

6 (b) If the balance remaining in the Consumer Recovery Account
7 contains more than four hundred thousand dollars (\$400,000), the
8 commissioner may authorize the transfer of all or part of the surplus
9 amount into the Real Estate Fund.

10 (c) The commissioner may authorize the return to the Consumer
11 Recovery Account of all or any amount previously transferred to
12 the Real Estate Fund under this section.

13 SEC. 18. Section 10471 of the Business and Professions Code
14 is amended to read:

15 10471. (a) When an aggrieved person obtains (1) a final
16 judgment in a court of competent jurisdiction, including, but not
17 limited to, a criminal restitution order issued pursuant to
18 subdivision (f) of Section 1202.4 of the Penal Code or Section
19 3663 of Title 18 of the United States Code, or (2) an arbitration
20 award that includes findings of fact and conclusions of law
21 rendered in accordance with the rules established by the American
22 Arbitration Association or another recognized arbitration body,
23 and in accordance with Sections 1281 to 1294.2, inclusive, of the
24 Code of Civil Procedure where applicable, and where the
25 arbitration award has been confirmed and reduced to judgment
26 pursuant to Section 1287.4 of the Code of Civil Procedure, against
27 a defendant based upon the defendant's fraud, misrepresentation,
28 or deceit, made with intent to defraud, or conversion of trust funds,
29 arising directly out of any transaction in which the defendant, while
30 licensed under this part, performed acts for which a real estate
31 license was required, the aggrieved person may, upon the judgment
32 becoming final, file an application with the Department of Real
33 Estate for payment from the Consumer Recovery Account, within
34 the limitations specified in Section 10474, of the amount unpaid
35 on the judgment that represents an actual and direct loss to the
36 claimant in the transaction. As used in this chapter, "court of
37 competent jurisdiction" includes the federal courts, but does not
38 include the courts of another state.

1 (b) The application shall be delivered in person or by certified
2 mail to an office of the department not later than one year after
3 the judgment has become final.

4 (c) The application shall be made on a form prescribed by the
5 department, verified by the claimant, and shall include the
6 following:

7 (1) The name and address of the claimant.

8 (2) If the claimant is represented by an attorney, the name,
9 business address, and telephone number of the attorney.

10 (3) The identification of the judgment, the amount of the claim
11 and an explanation of its computation.

12 (4) A detailed narrative statement of the facts in explanation of
13 the allegations of the complaint upon which the underlying
14 judgment is based.

15 (5) (A) Except as provided in subparagraph (B), a statement
16 by the claimant, signed under penalty of perjury, that the complaint
17 upon which the underlying judgment is based was prosecuted
18 conscientiously and in good faith. As used in this section,
19 “conscientiously and in good faith” means that no party potentially
20 liable to the claimant in the underlying transaction was intentionally
21 and without good cause omitted from the complaint, that no party
22 named in the complaint who otherwise reasonably appeared capable
23 of responding in damages was dismissed from the complaint
24 intentionally and without good cause, and that the claimant
25 employed no other procedural means contrary to the diligent
26 prosecution of the complaint in order to seek to qualify for the
27 Consumer Recovery Account.

28 (B) For the purpose of an application based on a criminal
29 restitution order, all of the following statements by the claimant:

30 (i) The claimant has not intentionally and without good cause
31 failed to pursue any person potentially liable to the claimant in the
32 underlying transaction other than a defendant who is the subject
33 of a criminal restitution order.

34 (ii) The claimant has not intentionally and without good cause
35 failed to pursue in a civil action for damages all persons potentially
36 liable to the claimant in the underlying transaction who otherwise
37 reasonably appeared capable of responding in damages other than
38 a defendant who is the subject of a criminal restitution order.

1 (iii) The claimant employed no other procedural means contrary
2 to the diligent prosecution of the complaint in order to seek to
3 qualify for the Consumer Recovery Account.

4 (6) The name and address of the judgment debtor or, if not
5 known, the names and addresses of persons who may know the
6 judgment debtor's present whereabouts.

7 (7) The following representations and information from the
8 claimant:

9 (A) That he or she is not a spouse of the judgment debtor nor a
10 personal representative of the spouse.

11 (B) That he or she has complied with all of the requirements of
12 this chapter.

13 (C) That the judgment underlying the claim meets the
14 requirements of subdivision (a).

15 (D) A description of searches and inquiries conducted by or on
16 behalf of the claimant with respect to the judgment debtor's assets
17 liable to be sold or applied to satisfaction of the judgment, an
18 itemized valuation of the assets discovered, and the results of
19 actions by the claimant to have the assets applied to satisfaction
20 of the judgment.

21 (E) That he or she has diligently pursued collection efforts
22 against all judgment debtors and all other persons liable to the
23 claimant in the transaction that is the basis for the underlying
24 judgment.

25 (F) That the underlying judgment and debt have not been
26 discharged in bankruptcy, or, in the case of a bankruptcy
27 proceeding that is open at or after the time of the filing of the
28 application, that the judgment and debt have been declared to be
29 nondischargeable.

30 (G) That the application was mailed or delivered to the
31 department no later than one year after the underlying judgment
32 became final.

33 (d) If the claimant is basing his or her application upon a
34 judgment against a salesperson, and the claimant has not obtained
35 a judgment against that salesperson's employing broker, if any, or
36 has not diligently pursued the assets of that broker, the application
37 shall be denied for failure to diligently pursue the assets of all other
38 persons liable to the claimant in the transaction unless the claimant
39 can demonstrate, by clear and convincing evidence, either that the
40 salesperson was not employed by a broker at the time of the

1 transaction, or that the salesperson's employing broker would not
2 have been liable to the claimant because the salesperson was acting
3 outside the scope of his or her employment by the broker in the
4 transaction.

5 (e) The application form shall include detailed instructions with
6 respect to documentary evidence, pleadings, court rulings, the
7 products of discovery in the underlying litigation, and a notice to
8 the applicant of his or her obligation to protect the underlying
9 judgment from discharge in bankruptcy, to be appended to the
10 application.

11 (f) An application for payment from the Consumer Recovery
12 Account that is based on a criminal restitution order shall comply
13 with all of the requirements of this chapter. For the purpose of an
14 application based on a criminal restitution order, the following
15 terms have the following meanings:

16 (1) "Judgment" means the criminal restitution order.

17 (2) "Complaint" means the facts of the underlying transaction
18 upon which the criminal restitution order is based.

19 (3) "Judgment debtor" means any defendant who is the subject
20 of the criminal restitution order.

21 The amendments to this section made at the July 1997-98
22 Regular Session shall become operative July 1, 2000.

23 SEC. 19. Section 10471.1 of the Business and Professions
24 Code is amended to read:

25 10471.1. (a) The claimant shall serve a copy of the notice
26 prescribed in subdivision (e) together with a copy of the application
27 upon the judgment debtor by personal service, by certified mail,
28 or by publication, as set forth in subdivision (b).

29 (b) If the judgment debtor holds an unexpired and unrevoked
30 license issued by the department, service of the notice and a copy
31 of the application may be made by certified mail addressed to the
32 judgment debtor at the latest business or residence address on file
33 with the department. If the judgment debtor does not hold an
34 unexpired and unrevoked license issued by the department and
35 personal service cannot be effected through the exercise of
36 reasonable diligence, the claimant shall serve the judgment debtor
37 by one publication of the notice in each of two successive weeks
38 in a newspaper of general circulation published in the county in
39 which the judgment debtor was last known to reside.

1 (c) If the application is served upon the judgment debtor by
2 certified mail, service is complete five days after mailing if the
3 place of address is within the State of California, 10 days after
4 mailing if the place of address is outside the State of California
5 but within the United States, and 20 days after mailing if the place
6 of address is outside the United States. Personal service is complete
7 on the date of service. Service by publication is complete upon
8 completion of the second week of publication.

9 (d) If a judgment debtor wishes to contest payment of an
10 application by the commissioner, he or she shall mail or deliver a
11 written response to the application addressed to the department at
12 its headquarters office within 30 days after service of the notice
13 and application, and shall mail or deliver a copy of the response
14 to the claimant. If a judgment debtor fails to mail or deliver a timely
15 response, he or she shall have waived his or her right to present
16 objections to payment.

17 (e) The notice served upon the judgment debtor shall include
18 the following statement:

19
20 “NOTICE: Based upon a judgment entered against you in favor of
21 _____, application for payment from the Consumer
22 (name of claimant)

23 Recovery Account of the Real Estate Fund is being made to the Department
24 of Real Estate.

25 “If payment is made from the Consumer Recovery Account, all licenses and
26 license rights that you have under the Real Estate Law will be automatically
27 suspended on the date of payment and cannot be reinstated until the Consumer
28 Recovery Account has been reimbursed for the amount paid plus interest at
29 the prevailing rate.

30 “If you wish to contest payment by the Real Estate Commissioner, you must
31 file a written response to the application addressed to the Department of Real
32 Estate at _____ within 30 days after mailing, delivery, or publication
33 of this notice and mail or deliver a copy of that response to the claimant. If
34 you fail to do so, you will have waived your right to present your objections
35 to payment.”

36
37 (f) If a judgment debtor fails to mail or deliver a written response
38 to the application with the department within 30 days after personal
39 service, mailing, or final publication of the notice, the judgment
40 debtor shall not thereafter be entitled to notice of any action taken

1 or proposed to be taken by the commissioner with respect to the
2 application.

3 SEC. 20. Section 10471.3 of the Business and Professions
4 Code is amended to read:

5 10471.3. (a) The commissioner shall render a final written
6 decision on the application within 90 days after a completed
7 application has been received unless the claimant agrees in writing
8 to extend the time within which the commissioner may render a
9 decision.

10 (b) The commissioner may deny or grant the application or may
11 enter into a compromise with the claimant to pay less in settlement
12 than the full amount of the claim. If the claimant refuses to accept
13 a settlement of the claim offered by the commissioner, the written
14 decision of the commissioner shall be to deny the claim or it shall
15 be deemed denied if a written decision is not rendered within the
16 time specified in subdivision (a). Evidence of settlement offers
17 and discussions between the commissioner and the claimant shall
18 not be competent evidence in judicial proceedings undertaken by
19 the claimant pursuant to Section 10472.

20 SEC. 21. Section 10471.5 of the Business and Professions
21 Code is amended to read:

22 10471.5. (a) The commissioner shall give notice of a decision
23 rendered with respect to the application to the claimant and to a
24 judgment debtor who has filed a timely response to the application
25 in accordance with Section 10471.1.

26 (b) If the application is denied, the notice to the claimant and
27 judgment debtor shall include the following:

28 “Claimant’s application has been denied. If the claimant wishes
29 to pursue the application in court, the claimant must file the
30 application as follows in a superior court of this state not later than
31 six months after receipt of this notice, pursuant to Section 10472
32 of the Business and Professions Code. If the underlying judgment
33 is a California state court judgment, the application shall be filed
34 in the court in which the underlying judgment was entered. If the
35 underlying judgment is a federal court judgment, the application
36 shall be filed in the superior court of any county within California
37 that would have been a proper venue if the underlying lawsuit had
38 been filed in a California state court, or in the Superior Court of
39 the County of Sacramento.”

1 (c) If the decision of the commissioner is to make a payment to
2 the claimant out of the Consumer Recovery Account, the following
3 notice shall be given to the judgment debtor along with a copy of
4 the decision of the commissioner:

5 “The decision of the Real Estate Commissioner on the application
6 of _____ is to pay \$_____ from the Consumer Recovery Account.

7 A copy of that decision is enclosed.

8 “Pursuant to Section 10475 of the Business and Professions
9 Code, all of your licenses and license rights under the Real Estate
10 Law will be suspended effective on the date of the payment, and
11 you will not be eligible for reinstatement of any license issued
12 under authority of the Real Estate Law until you have reimbursed
13 the Consumer Recovery Account for this payment plus interest at
14 the prevailing legal rate.”

15 “If you desire a judicial review of the suspension of your licenses
16 and license rights, you may petition the superior court for a writ
17 of mandamus. If the underlying judgment is a California state court
18 judgment, the petition shall be filed in the court in which the
19 judgment was entered. If the underlying judgment is a federal court
20 judgment, the petition shall be filed in the superior court of any
21 county within California that would have been a proper venue if
22 the underlying lawsuit had been filed in a California state court,
23 or in the Superior Court of the County of Sacramento. To be timely,
24 the petition must be filed with the court within 30 days of receipt
25 of this notice.”

26 SEC. 22. Section 10472 of the Business and Professions Code
27 is amended to read:

28 10472. (a) A claimant against whom the commissioner has
29 rendered a decision denying an application pursuant to Section
30 10471 may, within six months after the mailing of the notice of
31 the denial, file a verified application in superior court for an Order
32 Directing Payment Out of the Consumer Recovery Account based
33 upon the grounds set forth in the application to the commissioner.
34 If the underlying judgment is a California state court judgment,
35 the application shall be filed in the court in which the underlying
36 judgment was entered. If the underlying judgment is a federal court
37 judgment, the application shall be filed in the superior court of any
38 county within California that would have been a proper venue if
39 the underlying lawsuit had been filed in a California state court,
40 or in the Superior Court of the County of Sacramento.

(b) A copy of the verified application shall be served upon the commissioner and upon the judgment debtor. A certificate or affidavit of service shall be filed by the claimant with the court. Service on the commissioner may be made by certified mail addressed to the headquarters office of the department. Service upon a judgment debtor may be made in accordance with Section 10471.1. The notice served upon the judgment debtor shall read as follows:

“NOTICE: An application has been filed with the court for a payment from the Consumer Recovery Account that was previously denied by the Real Estate Commissioner.

“If the Department of Real Estate makes a payment from the Consumer Recovery Account pursuant to court order, all of your licenses and license rights under the Real Estate Law will be automatically suspended until the Consumer Recovery Account has been reimbursed for the amount paid plus interest at the prevailing rate.

“If you wish to defend in court against this application, you must file a written response with the court within 30 days after having been served with a copy of the application. If you do not file a written response, you will have waived your right to defend against the application.”

SEC. 23. Section 10472.1 of the Business and Professions Code is amended to read:

10472.1. (a) The commissioner and the judgment debtor shall each have 30 days after being served with the application in which to file a written response. The court shall thereafter set the matter for hearing upon the petition of the claimant. The court shall grant a request of the commissioner for a continuance of as much as 30 days and may, upon a showing of good cause by any party, continue the hearing as the court deems appropriate.

(b) The claimant shall have the burden of proving compliance with the requirements of Section 10471 by competent evidence at an evidentiary hearing. The claimant shall be entitled to a de novo review of the merits of the application as contained in the administrative record.

(c) If the judgment debtor fails to file a written response to the application, the application may be compromised or settled by the commissioner at any time during the court proceedings and the court shall, upon joint petition of the claimant and the

1 commissioner, issue an order directing payment out of the
2 Consumer Recovery Account.

3 SEC. 24. Section 10473 of the Business and Professions Code
4 is amended to read:

5 10473. Whenever the court proceeds upon an application under
6 Section 10472, it shall order payment out of the Consumer
7 Recovery Account only upon a determination that the aggrieved
8 party has a valid cause of action within the purview of Section
9 10471, and has complied with Section 10472.

10 The commissioner may defend any such action on behalf of the
11 Consumer Recovery Account and shall have recourse to all
12 appropriate means of defense and review, including examination
13 of witnesses and the right to relitigate any issues material and
14 relevant in the proceeding against the Consumer Recovery Account
15 which were determined in the underlying action on which the
16 judgment in favor of the applicant was based. If the judgment in
17 favor of the applicant was by default, stipulation, consent, or
18 pursuant to Section 594 of the Code of Civil Procedure, or
19 whenever the action against the licensee was defended by a trustee
20 in bankruptcy, the applicant shall have the burden of proving that
21 the cause of action against the licensee was for fraud,
22 misrepresentation, deceit, or conversion of trust funds. Otherwise,
23 the judgment shall create a rebuttable presumption of the fraud,
24 misrepresentation, deceit, or conversion of trust funds by the
25 licensee, which presumption shall affect the burden of producing
26 evidence.

27 The commissioner may move the court at any time to dismiss
28 the application when it appears there are no triable issues and the
29 petition is without merit. The motion may be supported by affidavit
30 of any person or persons having knowledge of the facts, and may
31 be made on the basis that the petition, and the judgment referred
32 to therein, does not form the basis for a meritorious recovery claim
33 within the purview of Section 10471; provided, however, the
34 commissioner shall give written notice at least 10 days before the
35 motion.

36 The commissioner may, subject to court approval, compromise
37 a claim based upon the application of an aggrieved party. The
38 commissioner shall not be bound by any compromise or stipulation
39 of the judgment debtor.

1 SEC. 25. Section 10473.1 of the Business and Professions
2 Code is amended to read:

3 10473.1. The judgment debtor may defend an action against
4 the Consumer Recovery Account on his or her own behalf and
5 shall have recourse to all appropriate means of defense and review,
6 including examination of witnesses. All matters, including, but
7 not limited to, the issues of fraud, misrepresentation, deceit, or
8 conversion of trust funds, finally adjudicated in the underlying
9 action are conclusive as to the judgment debtor and the applicant
10 in the proceeding against the Consumer Recovery Account.

11 SEC. 26. Section 10474 of the Business and Professions Code
12 is amended to read:

13 10474. Notwithstanding any other provision of this chapter
14 and regardless of the number of persons aggrieved or parcels of
15 real estate involved in a transaction or the number of judgments
16 against a licensee, the liability of the Consumer Recovery Account
17 shall not exceed the following amounts:

18 (a) Except as provided in subdivision (b), causes of action which
19 occurred on or after January 1, 1980, twenty thousand dollars
20 (\$20,000) for any one transaction and one hundred thousand dollars
21 (\$100,000) for any one licensee.

22 (b) For applications for payment from the Consumer Recovery
23 Account filed on or after January 1, 2009, fifty thousand dollars
24 (\$50,000) for any one transaction and two hundred fifty thousand
25 dollars (\$250,000) for any one licensee.

26 (c) When multiple licensed real estate personnel are involved
27 in a transaction and the individual conduct of two or more of the
28 licensees results in a judgment meeting the requirements of
29 subdivision (a) of Section 10471, the claimant may seek recovery
30 from the Consumer Recovery Account based on the judgment
31 against any of the licensed real estate personnel, subject to the
32 limitations of this section and subparagraph (E) of paragraph (7)
33 of subdivision (c) of Section 10471.

34 SEC. 27. Section 10474.5 of the Business and Professions
35 Code is amended to read:

36 10474.5. If the amount of liability of the Consumer Recovery
37 Account as provided for in Section 10474 is insufficient to pay in
38 full the valid claims of all aggrieved persons by whom claims have
39 been filed against any one licensee, the amount shall be distributed
40 among them in the ratio that their respective claims bear to the

1 aggregate of the valid claims, or in any other manner as the court
2 deems equitable. Distribution of any moneys shall be among the
3 persons entitled to share therein, without regard to the order of
4 priority in which their respective judgments may have been
5 obtained or their claims have been filed. Upon petition of the
6 commissioner, the court may require all claimants and prospective
7 claimants against one licensee to be joined in one action, to the
8 end that the respective rights of all claimants to the Consumer
9 Recovery Account may be equitably adjudicated and settled.

10 SEC. 28. Section 10475 of the Business and Professions Code
11 is amended to read:

12 10475. Should the commissioner pay from the Consumer
13 Recovery Account any amount in settlement of a claim or toward
14 satisfaction of a judgment against a licensed broker or salesperson,
15 the license of the broker or salesperson shall be automatically
16 suspended upon the date of payment from the Consumer Recovery
17 Account. No broker or salesperson shall be granted reinstatement
18 until he or she has repaid in full, plus interest at the prevailing
19 legal rate applicable to a judgment rendered in any court of this
20 state, the amount paid from the Consumer Recovery Account on
21 his or her account. A discharge in bankruptcy shall not relieve a
22 person from the penalties and disabilities provided in this chapter.

23 SEC. 29. Section 10476 of the Business and Professions Code
24 is amended to read:

25 10476. If, at any time, the money deposited in the Consumer
26 Recovery Account is insufficient to satisfy any duly authorized
27 claim or portion thereof, the commissioner shall, when sufficient
28 money has been deposited in the Consumer Recovery Account,
29 satisfy the unpaid claims or portions thereof, in the order that the
30 claims or portions thereof were originally filed, plus accumulated
31 interest at the rate of 4 percent a year.

32 SEC. 30. Section 10477 of the Business and Professions Code
33 is amended to read:

34 10477. Any sums received by the commissioner pursuant to
35 any provisions of this chapter shall be deposited in the State
36 Treasury and credited to the Consumer Recovery Account.

37 SEC. 31. Section 10479 of the Business and Professions Code
38 is amended to read:

39 10479. When, the commissioner has paid from the Consumer
40 Recovery Account any sum to the judgment creditor, the

1 commissioner shall be subrogated to all of the rights of the
2 judgment creditor and the judgment creditor shall assign all of his
3 or her right, title, and interest in the judgment to the commissioner
4 and any amount and interest so recovered by the commissioner on
5 the judgment shall be deposited to the Consumer Recovery
6 Account.

7 SEC. 32. Section 10481 of the Business and Professions Code
8 is amended to read:

9 10481. Nothing in this chapter limits the authority of the
10 commissioner to take disciplinary action against any licensee for
11 a violation of the Real Estate Law, or of Chapter 1 (commencing
12 with Section 11000) of Part 2, or of the rules and regulations of
13 the commissioner; nor shall the repayment in full of all obligations
14 to the Consumer Recovery Account by any licensee nullify or
15 modify the effect of any other disciplinary proceeding brought
16 pursuant to the Real Estate Law.

17 SEC. 33. Section 11310.1 is added to the Business and
18 Professions Code, to read:

19 11310.1. Protection of the public shall be the highest priority
20 for the Office of Real Estate Appraisers in exercising its licensing,
21 regulatory, and disciplinary functions. Whenever the protection
22 of the public is inconsistent with other interests sought to be
23 promoted, the protection of the public shall be paramount.

24 SEC. 34. Section 11313.2 is added to the Business and
25 Professions Code, to read:

26 11313.2. (a) The secretary shall review and evaluate the office,
27 and make recommendations to the Legislature by October 1, 2014,
28 regarding whether the office should be consolidated within the
29 Department of Real Estate, or consolidated within any other state
30 department or office, and shall provide appropriate justification
31 for that recommendation.

32 (b) Notwithstanding any other provision of law, on and after
33 January 1, 2015, the office shall be subject to review by the
34 appropriate policy committees of the Legislature. The review shall
35 include, but shall not be limited to, the recommendations of the
36 secretary regarding the office.

37 SEC. 35. Section 11315.7 is added to the Business and
38 Professions Code, to read:

39 11315.7. (a) Notwithstanding Section 11415.60 of the
40 Government Code, the office may enter into a settlement with a

1 licensee or applicant instead of the issuance of an accusation or
2 statement of issues against that licensee or applicant.

3 (b) The settlement shall identify the factual basis for the action
4 being taken and the statutes or regulations violated.

5 (c) A person who enters a settlement pursuant to this section is
6 not precluded from filing a petition, in the timeframe permitted
7 by law, to modify the terms of the settlement or a petition for early
8 termination of probation, if probation is part of the settlement.

9 (d) Any settlement with a licensee executed pursuant to this
10 section shall be considered discipline by the office.

11 SEC. 36. Section 11315.9 is added to the Business and
12 Professions Code, to read:

13 11315.9. (a) Except as otherwise provided by law, in any order
14 issued in resolution of a disciplinary proceeding before the office,
15 the director may request the administrative law judge to direct a
16 licensee found to have committed a violation of this part to pay a
17 sum not to exceed the reasonable costs of the investigation and
18 enforcement of the case.

19 (b) In the case of a disciplined licensee that is a corporation or
20 a partnership, the order may be made against the licensed corporate
21 entity or licensed partnership.

22 (c) A certified copy of the actual costs, or a good faith estimate
23 of costs where actual costs are not available, signed by the director
24 or the director's designated representative shall be prima facie
25 evidence of reasonable costs of investigation and prosecution of
26 the case. The costs shall include the amount of investigative and
27 enforcement costs up to the date of the hearing, including, but not
28 limited to, charges imposed by the Attorney General.

29 (d) The administrative law judge shall make a proposed finding
30 of the amount of reasonable costs of investigation and prosecution
31 of the case when requested pursuant to subdivision (a). The finding
32 of the administrative law judge with regard to costs shall not be
33 reviewable by the director to increase the cost award. The director
34 may reduce or eliminate the cost award, or remand to the
35 administrative law judge where the proposed decision fails to make
36 a finding on costs requested pursuant to subdivision (a).

37 (e) Where an order for recovery of costs is made and timely
38 payment is not made as directed in the director's decision, the
39 office may enforce the order for repayment in any appropriate

1 court. This right of enforcement shall be in addition to any other
2 rights the office may have as to any licensee to pay costs.

3 (f) In any action for recovery of costs, proof of the director's
4 decision shall be conclusive proof of the validity of the order of
5 payment and the terms for payment.

6 (g) (1) Except as provided in paragraph (2), the office shall not
7 renew or reinstate the license of any licensee who has failed to pay
8 all of the costs ordered under this section.

9 (2) The office may, in its discretion, conditionally renew or
10 reinstate for a maximum of one year the license of any licensee
11 who demonstrates financial hardship and who enters into a formal
12 agreement with the office to reimburse the office within that
13 one-year period for the unpaid costs.

14 (h) All costs recovered under this section shall be considered a
15 reimbursement for costs incurred and shall be deposited in the
16 Real Estate Appraisers Regulation Fund to be available upon
17 appropriation by the Legislature.

18 (i) Nothing in this section shall preclude the office from
19 including the recovery of the costs of investigation and enforcement
20 of a case in any stipulated settlement.

21 SEC. 37. Section 11319.1 is added to the Business and
22 Professions Code, to read:

23 11319.1. (a) When the director disciplines a licensee or
24 registrant by placing him or her on probation, the director may, in
25 addition to any other terms and conditions placed upon the licensee
26 or registrant, require the licensee or registrant to pay the monetary
27 costs associated with monitoring the licensee's or registrant's
28 probation.

29 (b) The director shall not renew a license of a licensee or a
30 certificate of a registrant who fails to pay all of the costs he or she
31 is ordered to pay pursuant to this section once the licensee or
32 registrant has served his or her term of probation.

33 (c) The director shall not reinstate a license or certificate if the
34 petitioner has failed to pay any costs he or she was ordered to pay
35 pursuant to this section.

36 (d) All costs recovered under this section shall be considered a
37 reimbursement for costs incurred and shall be deposited in the
38 Real Estate Appraisers Regulation Fund to be available upon
39 appropriation by the Legislature.

1 SEC. 38. Section 11319.2 is added to the Business and
2 Professions Code, to read:

3 11319.2. (a) A license of a licensee or a certificate of a
4 registrant shall be suspended automatically during any time that
5 the licensee or registrant is incarcerated after conviction of a felony,
6 regardless of whether the conviction has been appealed. The office
7 shall, immediately upon receipt of the certified copy of the record
8 of conviction, determine whether the license of the licensee or
9 certificate of the registrant has been automatically suspended by
10 virtue of the licensee's or registrant's incarceration, and if so, the
11 duration of that suspension. The office shall notify the licensee or
12 registrant in writing of the license or certificate suspension and of
13 his or her right to elect to have the issue of penalty heard as
14 provided in subdivision (d).

15 (b) If after a hearing before an administrative law judge from
16 the Office of Administrative Hearings it is determined that the
17 felony for which the licensee or registrant was convicted was
18 substantially related to the qualifications, functions, or duties of a
19 licensee or registrant, the director upon receipt of the certified copy
20 of the record of conviction, shall suspend the license or certificate
21 until the time for appeal has elapsed, if no appeal has been taken,
22 or until the judgment of conviction has been affirmed on appeal
23 or has otherwise become final, and until further order of the
24 director.

25 (c) Notwithstanding subdivision (b), a conviction of a charge
26 of violating any federal statute or regulation or any statute or
27 regulation of this state regulating dangerous drugs or controlled
28 substances, or a conviction of Section 187, 261, 262, or 288 of the
29 Penal Code, shall be conclusively presumed to be substantially
30 related to the qualifications, functions, or duties of a licensee or
31 registrant and no hearing shall be held on this issue. However,
32 upon its own motion or for good cause shown, the director may
33 decline to impose or may set aside the suspension when it appears
34 to be in the interest of justice to do so, with due regard to
35 maintaining the integrity of, and confidence in, the practice
36 regulated by the office.

37 (d) (1) Discipline may be ordered against a licensee or registrant
38 in accordance with the laws and regulations of the office when the
39 time for appeal has elapsed, the judgment of conviction has been
40 affirmed on appeal, or an order granting probation is made

1 suspending the imposition of sentence, irrespective of a subsequent
2 order under Section 1203.4 of the Penal Code allowing the person
3 to withdraw his or her plea of guilty and to enter a plea of not
4 guilty, setting aside the verdict of guilty, or dismissing the
5 accusation, complaint, information, or indictment.

6 (2) The issue of penalty shall be heard by an administrative law
7 judge from the Office of Administrative Hearings. The hearing
8 shall not be had until the judgment of conviction has become final
9 or, irrespective of a subsequent order under Section 1203.4 of the
10 Penal Code, an order granting probation has been made suspending
11 the imposition of sentence, except that a licensee or registrant may,
12 at his or her option, elect to have the issue of penalty decided before
13 those time periods have elapsed. Where the licensee or registrant
14 so elects, the issue of penalty shall be heard in the manner
15 described in subdivision (b) at the hearing to determine whether
16 the conviction was substantially related to the qualifications,
17 functions, or duties of a licensee or registrant. If the conviction of
18 a licensee or registrant who has made this election is overturned
19 on appeal, any discipline ordered pursuant to this section shall
20 automatically cease. Nothing in this subdivision shall prohibit the
21 office from pursuing disciplinary action based on any cause other
22 than the overturned conviction.

23 (e) The record of the proceedings resulting in a conviction,
24 including a transcript of the testimony in those proceedings, may
25 be received in evidence.

26 (f) Any other provision of law setting forth a procedure for the
27 suspension or revocation of a license or certificate issued by the
28 office shall not apply to proceedings conducted pursuant to this
29 section.

30 SEC. 39. Section 11319.3 is added to the Business and
31 Professions Code, to read:

32 11319.3. (a) (1) A licensee or registrant shall report any of
33 the following to the office:

34 (A) The bringing of an indictment or information charging a
35 felony against the licensee or registrant.

36 (B) The arrest of the licensee or registrant.

37 (C) The conviction of the licensee or registrant, including any
38 verdict of guilty, or plea of guilty or no contest, of any felony or
39 misdemeanor.

1 (D) Any disciplinary action taken by another licensing entity
2 or authority of this state or of another state or an agency of the
3 federal government.

4 (2) The report required by this subdivision shall be made in
5 writing within 30 days of the date of the bringing of the indictment
6 or the charging of a felony, the arrest, the conviction, or the
7 disciplinary action.

8 (b) Failure to make a report required by this section shall
9 constitute a cause for discipline.

10 SEC. 40. Section 11360 of the Business and Professions Code
11 is amended to read:

12 11360. (a) The director shall adopt regulations governing the
13 process and procedures for renewal of a license which shall include,
14 but not be limited to, continuing education requirements, which
15 shall be reported on the basis of four-year continuing education
16 cycles.

17 (b) An applicant for renewal of a license shall be required to
18 demonstrate his or her continuing fitness to hold a license prior to
19 its renewal. Applicants shall also fulfill continuing education
20 requirements established pursuant to this section and may certify
21 that they have read and understand all applicable California and
22 federal laws and regulations pertaining to the licensing and
23 certification of real estate appraisers in lieu of being required to
24 take a minimum of four hours of federal and California
25 appraisal-related statutory and regulatory law every four years.

26 (c) This section shall remain in effect only until January 1, 2013,
27 and as of that date is repealed, unless a later enacted statute, that
28 is enacted before January 1, 2013, deletes or extends that date.

29 SEC. 41. Section 11360 is added to the Business and
30 Professions Code, to read:

31 11360. (a) The director shall adopt regulations governing the
32 process and procedures for renewal of a license which shall include,
33 but not be limited to, continuing education requirements, which
34 shall be reported on the basis of four-year continuing education
35 cycles.

36 (b) An applicant for renewal of a license shall be required to
37 demonstrate his or her continuing fitness to hold a license prior to
38 its renewal. Applicants shall also fulfill continuing education
39 requirements established pursuant to this section and shall be

- 1 required to take a minimum of four hours of federal and California
- 2 appraisal related statutory and regulatory law every four years.
- 3 (c) This section shall become operative on January 1, 2013.

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